

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

PHYSICIANS HEALTHSOURCE, INC., an)	
Ohio corporation, individually and as the)	
representative of a class of similarly situated)	No. 1:12-cv-00729-RJJ
persons,)	
)	
Plaintiff,)	Hon. Robert J. Jonker
)	
v.)	
)	
STRYKER SALES CORPORATION,)	
STRYKER BIOTECH L.L.C., STRYKER)	
CORPORATION, HOWMEDICA)	
OSTEONICS CORP. and JOHN DOES 1-10,)	
)	
Defendants.)	

PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY
CONCERNING ATTORNEY FEE REQUEST

Since the January 29, 2016 filing of Plaintiff’s Supplemental Memorandum (Dkt. 282), there have been four decisions relevant to the primary issue to be determined by the Court at final approval: the calculation of the attorney fee award.

- On March 1, 2016, this Court in *American Copper & Brass, Inc. v. Lake City Industrial Products, Inc.* (Quist, J.), approved a one third fee in a TCPA class action settlement with a \$2,400,000.00 reversionary fund. *See* Order Approving Class Settlement, attached as Exhibit A. Of note, Judge Quist upheld a fee of \$800,000.00 in a case in which class counsel had “spent approximately 600 hours.” *Id.*, pp. 2, 6. As discussed in prior briefing, counsel here (attorneys only) totaled approximately 1,700 hours. (Dkt. 272 at p. 7). The request here is one third of the \$6,847,000.00 fund, or \$2,282,333.33. The ratio of fees to hours in *Lake City* is thus almost identical to Plaintiff’s request here.

- On February 9, 2016, the United States District Court for the Northern District of Ohio approved a settlement in a TCPA class action that included a \$7.65 million reversionary settlement fund, and a fee of one third of that fund (\$2,550,000.00), irrespective of the number of claims filed. A copy of the Final Approval Order in *Sandusky Wellness Center, LLC v. Wagner Wellness Inc.*, Case No. 12-CV-2257, is attached as Exhibit B.

- On January 29, 2016, the United States District Court for the Eastern District of Michigan approved a one third fee in the amount of \$14,000,000.00 of a \$42,000,000.00 fund. *See* Order Granting Plaintiffs' Counsel's Application for Award of Attorney's Fees in *Cason-Merenda v. VHS of Michigan, Inc. d/b/a Detroit Medical Center*, Case No. 2:06-cv-15601 (E.D. Mich. Jan. 29, 2016), attached as Exhibit C.

- On February 16, 2016, the Third Circuit Court of Appeals upheld a fee award of one third of a reversionary settlement fund in a TCPA fax class action. *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, -- Fed. Appx. --, 2016 WL 611441, *3 (3d Cir. Feb. 16, 2016). It interpreted *Boeing v. Van Gemert*, 444 U.S. 472, 480-81 (1980) consistently with other circuit courts. *See Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 626 (11th Cir. 2015); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d Cir. 2007); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999), *cert. denied*, 530 U.S. 1223, 120 S.Ct. 2237, 147 L.Ed.2d 265 (2000); *Williams v. MGM-Pathe Commun. Co.*, 129 F.3d 1026 (9th Cir. 1997). Specifically, it held that *Boeing* "confirmed the permissibility of using the entire fund as the appropriate benchmark, at least where each class member needed only to prove his or her membership in the injured class to receive a distribution." *Id.*, *quoting Boeing*. *Landsman & Funk* is attached as Exhibit D.

Respectfully submitted,

s/David M. Oppenheim
One of Plaintiff's attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing document was filed and served upon all counsel of record by the ECF system on March 15, 2016.

s/David M. Oppenheim
One of Plaintiff's Attorneys